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Attorneys -- Admission to the Bar -- Consideration of the Constitutionality of Bar Examiners' Inquiries into Political Associations and Beliefs

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Such a result would provide a definite line to enable lawyers and judges to determine with certainty whether an injured longshoreman is covered under the federal or the state act.

GEORGE HACKNEY EATMAN

Attorneys—Admission to the Bar—Consideration of the Constitutionality of Bar Examiners' Inquiries into Political Associations and Beliefs

Bar examiners for years have considered the "subversive applicant" an inherent danger to the legal profession[1] and have all but avowed a duty to deny him the privilege to practice.[2] Although most, if not all, states have a requirement of a finding of "good moral character" and some form of constitutional oath prior to admission,[3] some states have made demanding inquiries into the loyalty of applicants in bar-examination character questionnaires.[4] Bar-admission committees face increasing numbers of applicants whose interests in law reform, civil rights, and other "causes" present sharply divergent political views from those of the traditionally conservative bar.[5]

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[1] Remarks of Samuel J. Kanner, Chairman of the Florida Board of Bar Examiners in 54 BRIEF 154-55 (1959) (tracing the downfall of many constitutional governments to "subversive elements" infiltrating the bar) [hereinafter cited as Kanner Remarks]; Address of George T. Cronin, Secretary of the National Conference of Bar Examiners in 32 BAR EXAMINER 84-85 (1963) [hereinafter cited as Cronin Address].

[2] "The right to deny the privilege to practice to such an applicant appears to be fundamental." Cronin Address at 85.

> In this great democracy of ours, we, as bar examiners, are, therefore, intrusted with what might well prove to be the key to the preservation of what we know as a "way of life." . . . If we, as bar examiners, can successfully eliminate the subversive applicant . . . we will have prevented the infection of the bar. . . . This is our responsibility and task.

Kanner Remarks at 154-55.

[3] 7 C.J.S. *Attorney and Client* §§ 7(b), 12 (1937); Brown and Fassett, *Loyalty Tests for Admission to the Bar*, 20 U. CHI. L. REV. 480 & n.1 (1953) [hereinafter cited as Brown and Fassett]. *See also* Konigsberg v. State Bar of California, 366 U.S. 36, 40 & n.4 (1961).

[4] "Twenty-eight states report a character examination procedure that usually includes a personal appearance." SURVEY OF THE LEGAL PROFESSION, BAR EXAMINATIONS AND REQUIREMENTS FOR ADMISSION TO THE BAR 257 (1952). See generally Brown and Fassett at 483-87.

[5] Note, *Constitutional Limitations on the Process of Admission to the Bar*, N.Y.U. INTRA. L. REV. 135, 152 (1969). *See generally* Larson, *The Lawyer as Conservative*, 40 CORNELL L.Q. 183 (1955).

Recently a group of New York law students, applicants for the New York Bar,[6] and several organizations of lawyers and law students[7] challenged the statutory regulations governing admission to that bar.[8] After disposing of several procedural problems,[9] Judge Friendly, expressing the majority's view in *Law Students Civil Rights Research Council, Inc. v. Wadmond*,[10] wrote what must be considered the most significant opinion limiting the scope of bar-admission inquiry since the first decision in *Konigsberg v. State Bar of California*.[11]

The portion of section 90(1)(a) of the New York Judiciary Law providing that an applicant for the state bar must possess the "character and general fitness requisite for an attorney"[12] was found by Judge Friendly to be constitutional. He analogized this language to the "good moral character" approved by the Supreme Court in its second decision in *Konigsberg v. State Bar of California*.[13] Judge Friendly quoted *Konigsberg II* as standing for the proposition that the requirement for bar

[6] The individuals had passed the required written examination.

[7] Law Students Civil Rights Research Council, Inc.; Columbia Law Students Guild; and New York City Chapter of the National Lawyers Guild.

[8] The plaintiffs invoked the court's jurisdiction under the Judiciary Act of 1948, 28 U.S.C. § 1343(3) (1964) to enforce the Civil Rights Act of 1871, 42 U.S.C. § 1983 (1964), which provides:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

A three-judge court was convened pursuant to 28 U.S.C. § 2281 (1964).

[9] The procedural issues are beyond the scope of this note. The court found standing, Law Students Civil Rights Research Council, Inc. v. Wadmond, 299 F. Supp. 117, 122 (S.D.N.Y. 1969); found that the remedy sought was appropriate, *id.* at 123; and declined to abstain on the merits. *Id.* at 124.

[10] 299 F. Supp. 117 (S.D.N.Y. 1969), *prob. juris. noted*, 38 U.S.L.W. 3253 (U.S. Jan. 13, 1970).

[11] 353 U.S. 252 (1957).

[12] N.Y. JUDICIARY LAW § 90(1)(a) (McKinney 1968) states in full:

> Upon the state board of law examiners certifying that a person has passed the required examination, or that the examination has been dispensed with, the appellate division of the supreme court in the department to which such person shall have been certified by the state board of law examiners, if it shall be satisfied that such person possesses the *character and general fitness requisite for an attorney and counsellor-at-law*, shall admit him to practice as such attorney and counsellor-at-law in all the courts of this state, provided that he has in all respects complied with the rules of the court of appeals and the rules of the appellate divisions relating to the admission of attorneys. (emphasis added)

[13] 366 U.S. 36 (1961).

applicants to possess good moral character could not "well be drawn in question."[14] Although there is some doubt that *Konigsberg II* actually stands for that point,[15] Friendly was probably correct in avoiding the issue, since it was not squarely raised by the plaintiffs in his court.

Judge Friendly for the majority also held constitutional rule 9406 of article 94 of the New York Civil Practice Law and Rules, which requires that the applicant "furnish satisfactory proof to the effect . . . that he believes in the form of government of the United States and is loyal to such government." In light of *Speiser v. Randall*,[16] a 1958 Supreme Court decision, rule 9406 raises a serious question about the constitutionality of the burden of proof imposed upon an applicant for the New York Bar. In *Speiser*, the Court held that a California statute requiring a loyalty oath as a prerequisite to a veteran's tax exemption placed an unconstitutional burden of proof on veterans by limiting their freedom of speech and denying due process. Judge Motley, dissenting in part in *Law Students*, found *Speiser* a binding precedent:

> Here an applicant for admission to the bar has the burden of proving that he is loyal to the government. If in the opinion to some members of the character committee he should fail in this burden, he is denied the requisite certificate. This means that the applicant is denied the opportunity to enter the profession for which he has spent large sums of money and much time in study. "So far as I am concerned the consequences to the applicant whether considered from a financial standpoint, a social standpoint, or any other standpoint I can think of, constitute a more serious 'penalty' than that imposed upon Speiser," Konigsberg v. State Bar of California . . . 366 U.S. at 77 . . . Mr. Justice Black dissenting.
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> If, as in *Speiser*, the state cannot constitutionally impose upon a veteran seeking a tax exemption the burden of proving loyalty to our government, by what reasoning can the state constitutionally impose such burden on one seeking a license to practice law?[17]

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[14] 299 F. Supp. at 124.

[15] Konigsberg was denied admittance to the bar for obstructing the investigation into his background, not for lack of good moral character. The exact quotation in *Konigsberg II* reads: ". . . is not, nor could well be, drawn in question *here*." 366 U.S. at 41 (emphasis added). Obviously, Mr. Justice Harlan, writing for the majority in *Konigsberg II*, intended his remark to convey the thought that the requirement of "good moral character" could not be drawn into question in *that* case.

[16] 357 U.S. 513 (1958).

[17] 299 F. Supp. at 148 (opinion concurring in part and dissenting in part).

Speiser was distinguished by the majority in *Law Students*, however, on the ground that lawyers are within a limited class of persons who could create a serious danger to the public if evilly motivated.[18]

Certain questions included in the questionnaires promulgated by the bar-admission committees under the authority of the above statute and rule were also challenged. It is in an analysis of the validity of these questions that the court confronted the central issue of *Law Students*: Does the state exert a chilling effect on the associational and expressive rights of applicants by demanding an answer to broad political questions as a prerequisite to admission to the bar? Two of the questions survived the constitutional challenge, and they require little discussion:

> 27(b) Can you conscientiously, and do you, affirm that you are, without any mental reservation, loyal to and ready to support the Constitution of the United States?[19]
>
> . . . .
>
> 32(a) Have you read the Canons of Ethics adopted by the American and New York State Bar Associations?
>
> (b) Will you conscientiously endeavor to conform your professional conduct to them?[20]

But three others were found to be improper.

The first and most significant was Question 26:

> Have you ever organized or helped to organize or become a member of or participated in any way whatsoever in the activities of any organization or group of persons which teaches (or taught) or advocates (or advocated) that the Government of the United States or any State or any political subdivision thereof should be overthrown or overturned by force, violence or any unlawful means?[21]

The court ordered that this question be clarified to indicate "that the organization's teaching or advocacy of violent overthrow must have coincided in time with applicant's membership."[22] In declaring Question 26 overbroad, Judge Friendly stated that

> [t]he prospect of having to respond to [such] inquiry . . . might have a deterring effect on exercise of the constitutionally protected

[18] *Id.* at 125.
[19] *Id.* at 129.
[20] *Id.* at 132.
[21] *Id.* at 129.
[22] *Id.* at 131.

> right of free association . . . [which may be] justified only when . . . the interest of the state is compelling.[23]

Perhaps the major case paralleling this proposition is *Elfbrandt v. Russell*,[24] in which the Supreme Court, invalidating a similar oath for Arizona state employees, stated, "[a] law which applies to membership without the 'specific intent' to further the illegal aims [overthrow of the government] of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of 'guilt by association' which has no place here."[25]

Question 27(a) asked simply, "Do you believe in the principles underlying the form of government of the United States of America?"[26] This question was declared so impermissibly vague and imprecise as to be unconstitutional.[27] The court in its conclusion concerning this question appeared to draw an extremely fine line between it and rule 9406, requiring belief in the form of government of the United States. The distinction apparently hinged on two considerations. First, the court accepted the bar examiners' interpretation of rule 9406 "as directing them 'to test whether applicants for admission can truly subscribe to the constituitonal oath of office.' "[28] Thus, the phrase "form of government" was judicially accepted to mean "constitution." Second, invalidation of one item on an administrative questionnaire is not so abrasive as invalidation of the statutory rule under which the entire questionnaire is promulgated. Furthermore, the court was confronted only with the potential for abuse under the broadly worded rule; no actual abuse was alleged by the plaintiffs in their action for a declaratory judgment.

One wonders how far a committee of bar examiners could go in denying admission to the bar on political grounds under a standard of the applicant's loyalty to form of government. Could one who conscientiously objects to war,[29] who is arrested during civil-rights activities,[30]

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[23] *Id.*

[24] 384 U.S. 11 (1966). See also Keyishian v. Board of Regents, 385 U.S. 589, 606-10 (1967).

[25] 384 U.S. at 19.

[26] 299 F. Supp. at 129.

[27] "It seems unnecessary to require such an imprecise declaration from an applicant for admission to the bar." *Id.* at 130.

[28] *Id.* at 126. Judge Friendly "assume[s] a proper implementation of Rule 9406" to reach his conclusion.

[29] For a positive answer, see *In re* Summers, 325 U.S. 561 (1945), in which the Supreme Court upheld Illinois' contention that Summers' refusal as a con-

or who is an outspoken advocate of abolition of the draft and the end of the Viet Nam War[31] be barred? Would any of these actions be evidence tending to rebut a belief in the form of government of the United States, or even in the Constitution? The problem is that no one can tell—the words "form of government" are broad and vague.

Question 31 asked: "Is there any incident in your life not called for by the foregoing questions which has any favorable or detrimental bearing on your character or fitness? If the answer is 'yes' state the facts."[32] This question was held impermissible because of its serious *in terrorem* effect, especially in light of the directions at the head of the bar-application questionnaire:

> This is a statement made under oath. Applicant's failure fully and accurately to disclose any fact or information called for by any question may result in the denial of the application for admission, or if applicant shall have been admitted before the discovery thereof, in the revocation of his license to practice law.[33]

The plaintiffs also claimed that required submission to personal interviews was an unwarranted invasion of personal and political privacy. The court refused to interfere with this practice and said, "We have no reason to assume that as the scope of the committees' written inquiry is contracted, there will not be a similar adjustment in the focus of their spoken questions."[34] It should be mentioned that the defendant-examiners, perhaps aware of the potential infringement on first-amendment rights, made efforts during the course of litigation to remedy several particularly defective questions.[35]

How do bar-examiners' questions about past associations have a

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scientious objector to serve in the military made it impossible for him to take the constitutional oath. The Court found no violation of the fourteenth amendment.

[30] For a negative answer, see Hallinan v. Committee of Bar Examiners, 65 Cal. 2d 447, 421 P.2d 76, 55 Cal. Rptr. 228 (1966), in which the court held that convictions and fist fights surrounding civil-rights activities did not warrant refusal of certification for admission to the bar.

[31] A majority of the members of the Georgia Legislature felt that Mr. Julian Bond's statement of opposition to the draft and the Viet Nam War disqualified him from taking a constitutional oath of office for service in that body. The Supreme Court rejected this contention. Bond v. Floyd, 385 U.S. 116, 125 (1966).

[32] 299 F. Supp. at 131.

[33] *Id.* at 132.

[34] *Id.* This assumption is only one of a number made by Judge Friendly. *Quaere,* should the court assume a narrowing of the oral investigation when it is within the court's power to order such a step?

[35] *Id.* at 129.

chilling effect on applicants' first-amendment rights of free speech and association?[36] A law student generally discovers quite early in his legal career that he will be held accountable for his associations before the bar; thus he may be encouraged to avoid anything but the most orthodox political associations.[37] Furthermore, the vagueness and breadth of the questions often contained in questionnaires by bar examiners make it difficult to decide what to include in the answers.[38] It has been suggested

[36] Mr. Justice Black, dissenting in *Konigsberg II*, described the effect well:

> If every person who wants to be a lawyer is to be required to account for his associations as a prerequisite to admission into the practice of law, the only safe course for those desiring admission would seem to be scrupulously to avoid association with any organization that advocates anything at all somebody might possibly be against, including groups whose activities are constitutionally protected under even the most restricted notion of the First Amendment.

[37] A letter, dated March 18, 1970, from Julius L. Chambers, a prominent black attorney and graduate of the University of North Carolina School of Law, to J. Michael Brown indicates that

> [m]any Negro law students, including myself, were deterred from joining controversial organizations while in law school because of fear of possible reprisals in efforts for admission to the North Carolina Bar. One of the associations . . . was the NAACP.

[38] The North Carolina State Bar Admission Application Questionnaire provides classic examples of broad inquiries into a prospective lawyers' past associations and political activities:

> 39. Are you now or have you ever been a member of any civic, fraternal, professional, charitable, honorary or other organization? If so, name them.
>
> 40. Are you now or have you ever been a member of any organization, association, movement, group or combination of persons engaged in the activity or business of influencing public opinion or legislation or fostering or attempting to foster legislation in this or any other State or relating to any branches of the Federal Government? If so, give full particulars.
>
> 41. Are you now or have you ever been a member of any organization, association, movement, group or combination of persons which advocates the overthrow of our constitutional form of government, or which has adopted the policy of advocating or approving the commission of acts of force or violence to deny other persons their rights under the Constitution of the United States or which seeks to alter the form of government of the United States by unconstitutional means? If so, give full particulars.
>
> 42. Are you now or have you ever been a member of the Communist Party? If so, give the date or dates of your membership.
>
> 43. Are you now or have you ever been a member of, or associated with any organization, association, movement, group or combination of persons affiliated with, dominated by, or sympathetic to the Communist Party, or having other anti-social aims or objectives, or identified as being so affiliated? If so, give full particulars.
>
> 44. Have you ever engaged in any of the following activities of any organization of the type described above (Questions 39 through 43): contributions to, attendance at or participation in any organizational, social, educational, or other activities of said organizations or of any projects sponsored by them; the sale, gift, or distribution of any written, printed, or

that "hectoring students about membership in left-wing organizations, like National Lawyers Guild . . ." may force them to perjure themselves by giving answers best fitted to assure admission.[39]

If questions by bar examiners concerning past associations have a chilling effect on a law student's associational freedoms, is it permissible for the bar to ask them no matter how precisely they are phrased? In *Konigsberg I*,[40] the Supreme Court refused to reach first-amendment grounds raised by an applicant for admission to the California bar although Mr. Justice Black, speaking for the majority, indicated that the claims involving freedom of speech and association were not frivolous.[41] At his bar-admission hearing, Konigsberg had refused to answer questions that he considered to be political in nature. On the basis of this refusal, the admission committee found that he had not sustained his burden of proof of good moral character. The Supreme Court held that a mere refusal to answer the questions was not sufficient evidence to support that finding.[42] In a companion case, *Schware v. Board of Bar Examiners*,[43] the Court held that facts about Schware's political activities that were brought out at the administrative hearing[44] bore no rational connection to his fitness to practice law. The bar's refusal to admit him on lack of good moral character was held to have violated due process.[45]

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other matter, prepared, reproduced, or published, by them or any of their agents or instrumentalities? If so, give full particulars.

. . . .

68. Are there any unfavorable incidents in your life whether at school, college, law school, business, or otherwise, which may have a bearing upon your character or your fitness to practice law, not called for by the questions contained in your questionnaire or disclosed in your answers? . . . if yes, give full details.

[39] Brown and Fassett, *supra* note 3, at 501.

[40] Konigsberg v. State Bar, 353 U.S. 252 (1957).

[41] *Id.* at 270.

[42] *Id.* at 262. The Court found a violation of due process and equal protection. A close examination reveals the embryo of the "obstruction theory" (see text preceding note 47 *infra*), which flowered in *Konigsberg II*:

> If it were possible for us to say that the Board had barred Konigsberg solely because of his refusal to respond to its inquiries into his political association . . . then we would be compelled to decide far-reaching and complex questions . . . .

Id. at 261. *See also, id.* at 259 & n.12. Bar examiners were quick to catch this distinction. *See* Kanner Remarks at 160-61.

[43] 353 U.S. 232 (1957).

[44] Schware had been a member of the Communist Party between 1932 and 1940, had used an alias in labor-organizing activities to avoid prejudice against Jews, and had been arrested several times when involved in labor disputes but had not been convicted. *Id.* at 236-38.

[45] *Id.* at 247.

In 1961, the Supreme Court was directly faced with the first-amendment issues in *Konigsberg* II[46] and developed the "obstruction rule." Essentially on the same facts as those in *Konigsberg I*, the Court held that a refusal to answer questions considered relevant to the investigation by the bar-admission committee could constitutionally result in a denial of admission on the ground that the applicant was obstructing the committee. Mr. Justice Harlan, writing for the five-man majority, had no trouble in deciding that the state's interest outweighed *any* intrusion into an area protected by the first amendment.[47] A companion case, *In re Anastaplo*,[48] reaffirmed the "obstruction rule," notwithstanding overwhelming evidence of the applicant's good moral character.[49] Anastaplo had persistently refused to answer any questions about his political associations,[50] and the Court again rejected the first-amendment argument.[51]

It has now been nine years since the "obstruction rule" was formulated, and in no case during this period has the Supreme Court considered the constitutional aspects of political inquiry by bar examiners. There have been, however, a number of cases that indicate the Court's unwillingness to sanction answers to political questions as a condition to public employment or office. The attorney's position is analogous to that of a public employee since he occupies a position of trust and of responsibility to the public at large. The usual differentiation made between lawyers and public employees is that the former are not agents of the state nor salaried by it and therefore need not be as closely scrutinized. Justice Fortas, concurring in *Spevack v. Klein*,[52] a case involving the fifth amendment, illustrated the point:

> But a lawyer is not an employee of the State. He does not have the responsibility of an employee to account to the State for his actions

[46] Konigsberg v. State Bar, 366 U.S. 36 (1961).
[47] *Id.* at 49-53.
[48] 366 U.S. 82 (1961).
[49] *Id.* at 105-06 (dissenting opinion).
[50] He was questioned about association with the Ku Klux Klan, Silver Shirts, any organization on the Attorney-General's subversive list, Democratic Party, Republican Party, Communist Party, and the Diety. *Id.* at 102 (dissenting opinion). He did advocate a "right to revolution" and grounded his belief on a paraphrase of the Declaration of Independence. *Id.* at 99.
[51] "[T]he State's interest in enforcing such a rule as applied to refusals to answer questions about membership in the Communist Party outweighs any deterrent effect upon freedom of speech and association . . . ." *Id.* at 89.
[52] 385 U.S. 511 (1967).

> because he does not perform them as [an] agent . . . . The special responsibilities that he assumes as licensee of the State and officer of the court do not carry with them a diminution, however limited, of his Fifth Amendment rights.[53]

Judge Friendly in *Law Students* was confronted with the bar examiners' counterargument that public teachers deserve more protection of their constitutional rights because of their peculiar, sensitive need for academic freedom,[54] but he apparently rejected this theory.[55] The close analogy between attorneys and public officers or employees militates for a review of the doctrines underlying *Konigsberg II* and *Anastaplo*.

The Supreme Court's aversion to the conditioning of public employment or office on a limitaiton of first-amendment freedoms is evident in the line of cases since 1961 that involved loyalty oaths.[56] The earliest of these cases, *Cramp v. Board of Public Instruction*,[57] held a loyalty oath for teachers in Orange County, Florida, impermissibly vague. The Court declared, "[T]he vice of unconstitutional vagueness is further aggravated where, as here, the statute in question operates to inhibit the exercise of freedoms affirmatively protected by the Constitution."[58] In *Baggett v. Bullitt*[59] the Court held that states may not condition employment upon oaths[60] that are so vague that they serve to inhibit free speech.[61] And in *Bond v. Floyd*[62] the Court rejected, on first-amendment grounds, the notion that the Georgia Legislature could deny Bond his seat in that body on the basis that his opposition to national foreign policy and the selective-service system rendered him unable to take with sincerity the Georgia oath of office.[63]

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[53] *Id.* at 520 (concurring opinion).

[54] Shelton v. Tucker, 364 U.S. 479, 487 (1960).

[55] 299 F. Supp. at 130-31.

[56] Keyishian v. Board of Regents, 385 U.S. 589 (1967), is the most recent affirmation of the Court's aversion to loyalty oaths for those seeking public positions.

[57] 368 U.S. 278 (1961).

[58] *Id.* at 287.

[59] 377 U.S. 360 (1964).

[60] The challenged oath read: "I solemnly swear (or affirm) that I will . . . by precept and example promote respect for the flag and the institutions of the United States . . . reverence for law and order and undivided allegiance to the government of the United States." *Id.* at 361-62.

[61] *Id.* at 372-73. The Court also held that the oath violated due process. *Id.* at 371.

[62] 385 U.S. 116 (1966).

[63] Interestingly, Judge Friendly quoted *Bond v. Floyd* in *Law Students* (299 F. Supp. at 126) for the proposition that a legislature need *not* seat one elected

As this case note goes to press, *Law Students*[64] and its companion cases[65] are before the Supreme Court. They will again provide the Court with the opportunity to balance first-amendment freedoms against the need of society for political inquires by bar examiners. The Court's reappraisal will have to be made in light of the aforementioned cases dealing with loyalty oaths.

What is socially desirable about the practice of bar-admission committees excluding or even searching out subversive applicants?[66] A recent article suggests that even the "hard-core revolutionary" does not present a great danger to the state and that whatever dangers he creates can be adequately handled through the contempt powers of the courts and disbarment procedures.[67] Would it not be better for one who believes in radical political reform to work within the existing system than without? If bar committees "chill" leftwing applicants, will not the bar's membership increase by a proportionately greater number of orthodox, conservative members—thus further dividing those who seek radical political and social reform from those within the "power structure?" Such stratification cannot be said to be in the best interests of a democratic government.[68] This generation of politically active students should be encouraged to

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to membership who swears to an oath pro forma but who disagrees with that oath. Judge Friendly felt that bar-admission committees may make a reasonable inquiry whether a student can take an oath with sincerity.

[64] Law Students Civil Rights Research Council, Inc. v. Wadmond, 299 F. Supp. 117 (1969), *prob. juris. noted*, 38 U.S.L.W. 3253 (U.S. Jan. 13, 1970).

[65] *In re* Stolar, *cert. granted*, 396 U.S. 816 (1969); Baird v. State Bar, *cert. granted*, 394 U.S. 957 (1969). These two cases, having already been orally argued before the court, have been restored to the calendar for reargument: *Baird*, 396 U.S. 998 (1970); *Stolar*, 396 U.S. 999 (1970). They involve the petitioners' refusal to answer bar committees' political questions and subsequent denials of admission that were grounded, as in *Konigsberg II* and *Anastaplo*, on the "obstruction rule."

[66] Apparently some state bars do not. See Brown and Fassett, *supra* note 3, at 497:

> It is also relevant, for the sake of perspective, to record that at least seventeen states apparently make no loyalty investigation and have no loyalty tests at all, except the traditional oath to uphold the constitution. They are Arizona, Georgia, Kansas, Maine, Massachusetts, Minnesota, Mississippi, Missouri, Nevada, Nebraska, South Carolina, South Dakota, Utah, Vermont, West Virginia, Wisconsin, and Wyoming. To these may be added Connecticut, except New Haven County.

[67] Taylor, *Inquiries into the Political Beliefs and Activities of Applicants for Admission to the Bar*, 1 COLUM. SURVEY OF HUMAN RIGHTS L. 33, 40-45 (1967-68).

[68] In short, "[t]o force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals is to humiliate and degrade it." *In re* Anastaplo, 366 U.S. 82, 115-16 (1961) (Black, J., dissenting).

enter the field of law rather than discouraged. No one should feel that leftwing political leanings or associations might result in a denial of admission to the bar. As Judge Motley pointed out in his opinion in *Law Students*, "It is nothing short of a complete irony that lawyers who fought for and won constituitonal protections for other professions are the last to receive protection for themselves."[69] It is true that only a very small percentage of all applicants are rejected by state bars on grounds of character.[70] However, the real problem to be confronted is not the denial of admission occasioned by political probing of bar examiners, but the "chilling effect" on freedom of speech and association. Until required by the courts, all bar examiners should voluntarily share the view of Robert E. Seifer, Secretary of the Missouri Board of Law Examiners in 1952:

> Speaking solely for myself, I so not think that inquiry into political beliefs has any place in bar examination work. I think that the study of law is the best training anyone can have for becoming a good American and I do not think it should be cluttered up with investigations about political beliefs and whether or not the applicant happens to agree with what a majority of the people may or may not consider at the moment to be subversive.[71]

J. MICHAEL BROWN

Colleges and Universities—Constitutional Law—Legality of Broad Rules Governing Student Behavior

It is clear that the federal courts are concerned about the standards of procedural fairness observed by colleges and universities at disciplinary hearings.[1] But the courts have been extremely reluctant to scrutinize substantive rules that govern student behavior and more reluctant still to void such rules because of constitutional infirmity.[2] Using *Esteban v.*

[69] 299 F. Supp. at 146 (opinion concurring in part and dissenting in part).

[70] Estimates from New York, California, and Illinois bar admission rejections in 1952 indicates that only one-half of one per cent of all applicants were rejected on grounds of character. Brown and Fassett, *supra* note 3, at 497.

[71] *Id.* at 508. *Quoting* a letter from Robert E. Seifer.

[1] *E.g.*, Dixon v. Alabama State Bd. of Educ., 294 F.2d 150 (5th Cir. 1961); Zanders v. Louisiana State Bd. of Educ., 281 F. Supp. 747 (W.D. La. 1968); Jones v. State Bd. of Educ., 279 F. Supp. 190 (M.D. Tenn. 1968); Esteban v. Central Mo. State College, 277 F. Supp. 649 (W.D. Mo. 1967).

[2] *See e.g.*, Sweezy v. New Hampshire, 354 U.S. 234 (1957); Steiner v. New